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EXAMINER				
DENNISON, JERRY B				
ART UNIT		PAPER NUMBER		
2443				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/740,528

**Applicant(s)**

DUTTA, RABINDRANATH

**Examiner**

J Bret Dennison

**Art Unit**

2443

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-14, 16-19, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-14, 16-19, 22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/C.3)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**RESPONSE TO AMENDMENT**

1. This Action is in response to the Amendment of Application Number 09/740,528 received on 12/15/2009.
2. Claims 1-3, 5-14, and 16-19, 22-23 are presented for examination.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 5-14, 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoehn-Saric et al. (US 5,915,973) in view of DeNicola et al. (US 6288753) and further in view of Walker et al. (US 5947747).
4. Regarding claims 1, 8, and 14, Hoehn-Saric disclosed a method for administering exam content from a server to at least one client over a network, the method comprising:  
  
transmitting a video frame of a student to the server at least once during the exam to verify the identity of the student (Hoehn-Saric, col. 2, lines 60-65; col. 5, lines 40-50; col. 6, lines 45-53);  
  
comparing the video frame to a second video frame to verify the identity of the student, wherein the second video frame is stored in the transcript at a time other than

during the test (Hoehn-Saric, col. 3, lines 1-8, Hoehn-Saric disclosed separate registration that includes obtaining biometric data from the test taker; col. 6, line 66 through col. 7, line 7; Biometric data includes a still image; col. 3, lines 20-25, comparing; see also col. 8, lines 29-35 and 47-50);

generating a transcript in response to answers submitted by the student to at least one exam question resident on the server (Hoehn-Saric, col. 7, lines 12-23);

storing the video frame in conjunction with the transcript (Hoehn-Saric, col. 7, lines 12-23; col. 9, lines 30-45); and

providing access to the transcript to at least one third party (Hoehn-Saric, col. 10, lines 5-10).

Hoehn-Saric also explicitly disclosed using a video camera to monitor and record the testing event (Hoehn-Saric, col. 6, line 45-47) and that the proctoring data may be evaluated and recorded "during the testing event", and in which the recording device can also be used to capture a still image portrait of the testing candidate (Hoehn-Saric, col. 6, lines 45-65).

The advantages of the teachings of Hoehn-Saric are to allow test givers to proctor students taking their exams remotely (Hoehn-Saric, col. 1, lines 17-23, col. 4, lines 15-18, 56-60). While Hoehn-Saric further disclosed the central station including a storage means for storing test question data (Hoehn-Saric, col. 2, lines 44-45), Hoehn-Saric did not explicitly state how such tests are set up with the system.

DeNicola disclosed a method and system for instructors to give lectures and tests via the Internet (DeNicola, see Abstract), in which a test administrator workstation,

coupled to a web server, permits a test administrator to create, modify or delete test questions that the administrator associates with a test, and the web server generates the test (DeNicola, col. 4, lines 51-67, col. 5, lines 1-7 and 49-67).

One of ordinary skill would have been motivated to combine the teachings of Hoehn-Saric and DeNicola since both provide implementations regarding remote testing and as such, both teachings are within the same environment. One of ordinary skill would have also been motivated to combine their teachings since setting up test data would be required for the test-givers of Hoehn-Saric in order for them to actually use the system of Hoehn-Saric.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to incorporate the test setup procedure of DeNicola into the testing center of Hoehn-Saric in order to provide test-givers with a way to create, modify, or delete tests however the please, thereby providing test-givers an easy way of remotely administering tests, whether old or new, as well as modifying test data on the fly, with a minimum of overhead and other expenses (Hoehn-Saric, col. 4, lines 24-35; DeNicola, col. 3, lines 15-26).

While the combination of Hoehn-Saric and DeNicola disclosed the ability to record biometric data (col. 5, lines 41-48), including still images, of a test taker while taking an exam and can be used for validation purposes (Hoehn-Saric, col. 6, lines 45-65), the combination did not explicitly state such recording of biometric data to be collected at random times during the exam.

In an analogous art, Walker disclosed a method/system for computer-based educational testing in which biometric data is collected from a test taker while he/she is taking an exam, and biometric data may be collected at a "random time" during the exam (Walker, col. 15, lines 46-55).

Both the combination of Hoehn-Saric/DeNicola and Walker disclosed the use of biometric data recorded during an exam in order to detect and prevent cheating among test taking. While the Hoehn-Saric/DeNicola combination disclosed the use of specific types of biometric data such as still images to be recorded during an exam, the Hoehn-Saric/DeNicola combination did not provide the detail as to how such still images are recorded. This would have motivated one skilled in the art to rely on well known ways in the art of collecting biometric data, such as the collection of biometric data at random times as taught by Walker.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the collection of biometric data at random times during an exam, as taught by Walker, into the combination of Hoehn-Saric/DeNicola in order to obtain the predictable results of collecting the types of biometric data as disclosed by the Hoehn-Saric/DeNicola combination in a random manner, thereby providing options to test administrators, creating a system in a manner deemed as secure as desired by the test administrators of the exams.

Claim 8 includes a system having a processor, memory, and a medium containing a program to implement the limitations of claim 1. Claim 14 includes a

program product on a medium implementing the limitations of claim 1. Hoehn-Saric clearly disclosed a system or program as claimed (Hoehn-Saric, col. 3, lines 43-50).

5. Regarding claims 2, 10 and 16, Hoehn-Saric, DeNicola and Walker disclosed the limitations as described in claims 1, 8, and 14, including providing an exam content generator with access to registered exams on the server, (DeNicola, col. 4, lines 55-67). See motivation above.

6. Regarding claims 3, 9, and 17, Hoehn-Saric, DeNicola and Walker disclosed the limitations, substantially as claimed, as described in claims 1, 8, and 14, including providing an exam grader with access to student's answers on the server, (Hoehn-Saric, col. 9, lines 30-45). See motivation above.

7. Regarding claims 5, , Hoehn-Saric, DeNicola and Walker disclosed the limitations, substantially as claimed, as described in claims 1, including instructions for recording in the transcript at least one video image of the student recorded at a time other than during the exam to compare with the at least one video frame transmitted during the exam (Hoehn-Saric, col. 3, lines 1-8, Hoehn-Saric disclosed separate registration that includes obtaining biometric data form the test taker; col. 6, line 66 through col. 7, line 7; Biometric data includes a still image; col. 3, lines 20-25, comparing; see also col. 8, lines 29-35 and 47-50). See motivation above.

8. Regarding claims 6, 12, and 18, Hoehn-Saric, DeNicola and Walker disclosed the limitations, substantially as claimed, as described in claims 1, 8, and 14, including registering a plurality of exams with the server (Hoehn-Saric, col. 7, lines 35-45). See motivation above.

9. Regarding claims 7, 13 and 19, Hoehn-Saric, DeNicola and Walker disclosed the limitations, substantially as claimed, as described in claims 1, 8, and 14, including recording a student's answers to at least one exam question presented by the server; and grading the student's answers to generate an exam result, (Hoehn-Saric, col. 9, lines 35-45). See motivation above.

10. Regarding claim 11, Hoehn-Saric, DeNicola and Walker disclosed the limitations, substantially as claimed, as described in claims 1, 8, and 14, including wherein the server comprises a means for accepting and storing video images of the student (Hoehn-Saric, col. 6, lines 45-65). See motivation above.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeNicola et al. (US 6288753).

12. Regarding claim 22, DeNicola disclosed a test administrator accessing the system through a password protected Web page that allows the test administrator to create, modify, and or delete test material (DeNicola, col. 12, lines 38-44). As such, test



administrators are provided with a password (i.e. access code) that enables the administrator access to the site to create new tests or modify existing tests, and as such, the password is associated with a plurality of exam titles. DeNicola further disclosed that creation of each exam includes parameters including course title (DeNicola, col. 13, lines 10-15) and when the exam is generated, the exam is assigned an exam ID (DeNicola, col. 13, lines 31-36). Since DeNicola disclosed that administrators can "create, modify or delete test questions that the test administrator associates with a test and to permit the test administrator to create, modify, or delete the test questions at any time that the associated test is available to end users" (DeNicola, col. 4, lines 55-65), then it is clear that the test administrator has access to the exams, and such would require using the exam parameters, such as the exam ID or any other parameter unique to the particular exam of interest. Therefore, DeNicola disclosed a method of administering exam content from an exam server, the method comprising:

providing an exam provider with a first access code (DeNicola, col. 12, lines 38-44);

associating the first access code with a plurality of exam titles (DeNicola, col. 12, lines 38-44);

assigning each exam title of the plurality of exam titles with a unique exam title access code of a plurality of exam title access codes (DeNicola, col. 13, lines 10-15, 31-36);

entering one of the assigned unique exam title access codes to access an exam corresponding to the entered assigned unique title access code (DeNicola, col. 4, lines 55-65);

generating exam content for the exam corresponding to the entered assigned unique title access code (DeNicola, col. 4, lines 65-67; col. 13, lines 30-36);

storing the exam content in conjunction with the exam corresponding to the entered assigned unique title access code (DeNicola, col. 13, lines 30-36); and

accessing the exam in order to take the exam by entering a student ID and a password and the unique exam title access code assigned to the exam (DeNicola, col. 16, lines 35-40, the user accesses the system with username and password; col. 5, lines 55-62; student requests to take the test by test name).

DeNicola did not explicitly state the actual registering of the test administrators with the exam server.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to register the test administrators with the site in order to only provide access to the "password protected Web site" of DeNicola, by authorized users of the system, in order to obtain the predictable result of maintaining a secure site and reducing the chances of intruders and cheating students being able to acquire the test information.

13. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeNicola et al. (US 6288753) in view of Hoehn-Saric et al. (US 5,915,973) and further in view of Walker et al. (US 5947747).

Regarding claim 23, DeNicola disclosed the limitations as described in claim 22. DeNicola did not explicitly state storing a first video frame of a student corresponding to the student ID taken at a time other than during the exam; transmitting a second video frame of a student to the server at least once during the exam; comparing the first video frame of the student with the second video frame of the student to verify the identity of the student during the exam; generating a transcript in response to answers submitted by the student to at least one exam question resident on the server; storing the video frame in conjunction with the transcript; and providing access to the transcript to at least one third party.

In an analogous art, Hoehn-Saric disclosed a system for administration of remotely-proctored exams including storing a first video frame of a student corresponding to the student ID taken at a time other than during the exam (Hoehn-Saric, col. 3, lines 1-8, Hoehn-Saric disclosed separate registration that includes obtaining biometric data from the test taker; col. 6, line 66 through col. 7, line 7; Biometric data includes a still image; col. 3, lines 20-25, comparing; see also col. 8, lines 29-35 and 47-50);

transmitting a second video frame of a student to the server at least once during the exam (Hoehn-Saric, col. 2, lines 60-65; col. 5, lines 40-50; col. 6, lines 45-53);

comparing the first video frame of the student with the second video frame of the student to verify the identity of the student (Hoehn-Saric, col. 3, lines 1-8, Hoehn-Saric disclosed separate registration that includes obtaining biometric data form the test taker; col. 6, line 66 through col. 7, line 7; Biometric data includes a still image; col. 3, lines 20-25, comparing; see also col. 8, lines 29-35 and 47-50);

generating a transcript in response to answers submitted by the student to at least one exam question resident on the server (Hoehn-Saric, col. 7, lines 12-23);

storing the video frame in conjunction with the transcript (Hoehn-Saric, col. 7, lines 12-23; col. 9, lines 30-45); and

providing access to the transcript to at least one third party (Hoehn-Saric, col. 10, lines 5-10).

Hoehn-Saric also explicitly disclosed using a video camera to monitor and record the testing event (Hoehn-Saric, col. 6, line 45-47) and that the proctoring data may be evaluated and recorded "during the testing event", and in which the recording device can also be used to capture a still image portrait of the testing candidate (Hoehn-Saric, col. 6, lines 45-65).

One of ordinary skill would have been motivated to combine the teachings of Hoehn-Saric and DeNicola since both provide implementations regarding remote testing and as such, both teachings are within the same environment. One of ordinary skill would have also been motivated to combine their teachings since setting up test data would be required for the test-givers of Hoehn-Saric in order for them to actually use the system of Hoehn-Saric.

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to incorporate the test administration procedure of Hoehn-Saric into the testing center of DeNicola in order to provide test-givers with a way to remotely administer tests in a way that eliminates the possibility of cheating during the testing process (Hoehn-Saric, col. 4, lines 15-20).

While the combination of Hoehn-Saric and DeNicola disclosed the ability to record biometric data (col. 5, lines 41-48), including still images, of a test taker while taking an exam and can be used for validation purposes (Hoehn-Saric, col. 6, lines 45-65), the combination did not explicitly state such recording of biometric data to be collected at random times during the exam.

In an analogous art, Walker disclosed a method/system for computer-based educational testing in which biometric data is collected from a test taker while he/she is taking an exam, and biometric data may be collected at a "random time" during the exam (Walker, col. 15, lines 46-55).

Both the combination of Hoehn-Saric/DeNicola and Walker disclosed the use of biometric data recorded during an exam in order to detect and prevent cheating among test takers. While the Hoehn-Saric/DeNicola combination disclosed the use of specific types of biometric data such as still images to be recorded during an exam, the Hoehn-Saric/DeNicola combination did not provide the detail as to how such still images are recorded. This would have motivated one skilled in the art to rely on well known ways in the art of collecting biometric data, such as the collection of biometric data at random times as taught by Walker.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the collection of biometric data at random times during an exam, as taught by Walker, into the combination of Hoehn-Saric/DeNicola in order to obtain the predictable results of collecting the types of biometric data as disclosed by the Hoehn-Saric/DeNicola combination in a random manner, thereby providing options to test administrators, creating a system in a manner deemed as secure as desired by the test administrators of the exams.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3, 5-14, 16-21 have been considered but are moot in view of the new ground(s) of rejection.

With regards to claims 22 and 23, Applicant argues, "The claimed subject matter associates a 'unique exam title access code' which is not a 'test name'".

In response, and upon further review of the previous office action, the rejection also relies upon col. 16, lines 35-40, which provide the use of an exam ID that correlates all selected questions with the particular exam ID, also col. 4, lines 55-65 which show associations between the test that the user requests and the identification of the test, thereby clearly providing the exam ID as disclosed by DeNicola upon request of the exam. Examiner also would like to mention that it is clearly the exam ID that forms the basis for the exam in the exam table, and therefore has to be used in order to obtain the exam.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

### ***Conclusion***

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure

relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on (571) 272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.



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/J Bret Dennison/  
Primary Examiner, Art Unit 2443